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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 678 and 679

GEORGE E. CRANDALL,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR WRITS OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

H. EUGENE GARDNER,
Counsel for Petitioner.

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GEORGE E. CRANDALL,

vs. *Petitioner,*

COMMONWEALTH OF PENNSYLVANIA.

PETITION FOR WRITS OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioner, George E. Crandall, respectfully shows:

1a. That the above cases are criminal actions brought against him charging him with practicing medicine without a license from the Commonwealth of Pennsylvania, and charging him with operating a private hospital and a private nursing home without a license from the Commonwealth of Pennsylvania.

1b. That he was indicted on August 28, 1940, and brought to trial by jury and convicted on August 30, 1940, and sentenced on January 18, 1941, to sixty days in jail, a $1,000 fine and costs of prosecution amounting to possibly $500.

1c. That from the foregoing sentences he appealed to the Superior Court of the Commonwealth of Pennsylvania on the ground that he had been convicted without due process

of law and in denial of his rights to the equal protection of the law and contrary to his rights under Amendment XIV, Section 1, to the Constitution of the United States of America, reading in part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

1d. That one of the two cases referred to above involves an attempt to apply an Act of Assembly relating to the licensing of private nursing homes and private hospitals to the operation of an institution known as a health school—thus construing a State law so as to apply the same to subject matter which it was not intended to apply to. The Act of Assembly referred to is the Act of June 12, 1931, P. L. 510, of the Commonwealth of Pennsylvania, which reads in Section 1 thereof:

> "Be it enacted, &c., That after the effective date of this act, it shall be unlawful for any person, copartnership, association or corporation to operate for profit, within this Commonwealth a private nursing home or private hospital, for persons requiring care, treatment, or nursing by reason of sickness, injury, infirmity, or other disability, without a license as hereinafter required, but this act shall not be construed to apply to any State or State-aided institution or any institution licensed by the Department of Welfare under other statutes."

1e. That the other of the two cases referred to above involves an attempt to make the use of the degree M. D., obtained from a medical school chartered by another State, the practice of medicine or the holding out to practice medicine in the State of Pennsylvania. The Act of Assembly referred to is the Act of June 3, 1911, P. L. 639-649, as

amended July 25, 1913, P. L. 1220; April 30, 1921, P. L. 158; July 12, 1935, P. L. 703; July 19, 1935, P. L. 1329 and May 20, 1937, P. L. 725, which reads in Section 1 thereof:

> "Be it enacted, &c., That on and after January first, nineteen hundred and twelve, it shall not be lawful for any person in the State of Pennsylvania to engage in the practice of medicine and surgery, or to hold himself or herself forth as a practitioner in medicine and surgery, or to assume the title of doctor of medicine and surgery or doctor of any specific disease or diagnose diseases or to treat diseases by the uses of medicine and surgery, or to sign any death certificate or to hold himself or herself forth as able to do so, excepting those hereinafter exempted, unless he or she has first fulfilled the requirements of this act and has received a certificate of licensure from the State Board of Medical Education and Licensure created by this act, which license shall be properly recorded in the office of the Superintendent of Public Instruction at Harrisburg."
>
> "Section 13. The provisions of this act shall not apply either directly or indirectly, by intent or purpose, to affect the practice of pharmacy * * * nor to effect the practice of dentistry * * * *nor to effect the practice of osteopathy.*"

1f. The aforesaid laws of Pennsylvania, construed as aforesaid, operate in such fashion as to deprive your petitioner of his rights under Federal and State Constitutions as hereinbefore and hereinafter referred to, including his right to practice surgery under his osteopathic license, and his right to use M. D. granted by a school chartered in another State just as L. L. B. may be used elsewhere than in the State where granted.

1g. That the Superior Court of the Commonwealth of Pennsylvania affirmed the decisions of the Quarter Sessions Court of York County, Pennsylvania, on June 30, 1941, and thereafter your petitioner presented a petition to the Su-

preme Court of Pennsylvania to allow appeals in both cases from the Superior Court of Pennsylvania, but the Supreme Court of Pennsylvania refused to allow the appeals as follows:

"September 24, 1941: Petition refused. Per Curiam."

1h. That the record in the case has been returned to the Quarter Sessions Court of York County, Pennsylvania, where it is now lodged for execution of that Court's sentences.

1i. That your petitioner files this petition for Writs of Certiorari in both of the above cases directed to the Superior Court of Pennsylvania to certify the record in both said cases for examination by Your Honorable Court and for determination of the questions hereinbefore and hereinafter raised by your petitioner.

1. That your petitioner is a citizen of the United States of America, and a resident and citizen of the Commonwealth of Pennsylvania, his place of residence being located on the Lincoln Highway between Lancaster, Pennsylvania, and York, Pennsylvania, his address being R. F. D. No. 7, Lincoln Highway, York, Pennsylvania.

2. That your petitioner is an osteopathic physician and duly licensed as such by the Commonwealth of Pennsylvania for more than thirty years and president of Dr. Crandall's Health School, Inc., a Pennsylvania Corporation, which operates Dr. Crandall's Health School on the Lincoln Highway near York, Pennsylvania, where persons are taught how to preserve and improve their health by correcting their way of living and by the use of natural means and without the use of drugs.

3. That your petitioner has been located as aforesaid and practised as aforesaid for the past 20 years and more, and

during that time and down to the present time, there has been no change in his method for preserving and restoring health nor has he at any time during those 20 years and more and down to the present time, used or advocated the use of drugs or the methods employed in the practice of *materia medica* although he holds the degree of M.D. from a medical school incorporated by the State of Illinois and partly from the use of which he was wrongly charged with practicing medicine.

4. That your petitioner has been very successful in preserving and restoring the health of many persons not only in Pennsylvania but from all over the United States and from abroad by teaching them how to correct their way of living and how to preserve and restore their health by natural means, including many persons prominent in the public life of the State and Nation, and in so doing, he has prospered to a marked extent.

5. That the aforesaid institution and the activity of your petitioner thereat was inspected by persons employed by the Commonwealth of Pennsylvania, from time to time during the period of years aforesaid, and it was not until recent years when certain persons sought to avoid their financial obligations to your petitioner and one or more persons sought to obtain money from your petitioner that complaints were made against him to the effect that he practiced medicine without a license and operated a hospital or nursing home without license.

6. That the aforesaid accusations were false and were made maliciously by the aforesaid persons for the purpose of either avoiding their financial obligation to your petitioner or for the purpose of recovering from him by criminal proceedings the money they had paid or for the purpose of getting out of him, money to which they were not legally entitled.

7. That your petitioner did not practice medicine, and did not conduct a hospital and did not conduct a private nursing home, and, therefore, could not be guilty of doing these things without a license, is borne out by the testimony of Dr. H. A. Brown, the only medical testimony called against your petitioner by the Commonwealth (R. 65a, 67a and following) and by the testimony of your petitioner and the testimony of Mrs. Ida L. Vannaman and Mrs. Kate Porter (R. 129a to 144a incl. and following), all of whom qualified as witnesses who were in a position to state the distinction between what constitutes and what does not constitute the practice of medicine, the conducting of a hospital and the conducting of a private nursing home.

8. That there is not sufficient in the Commonwealth's evidence (R. 19a to 102a incl. and following) to support conviction of your petitioner of the offenses charged (R. 6a *et seq.* and 15a *et seq.*) in the Bill of Indictment.

9. That even if the aforesaid Commonwealth's evidence were sufficient to support the offenses charged in the Bill of Indictment (and this is not admitted), petitioner's real complaint as a citizen of the United States of America in that he was forced to trial on all charges in the month of August, 1940, at a time when he could not reach his counsel, John P. Connelly, Esq., of the Philadelphia Bar who was away on vacation, and was forced to say that in the absence of said counsel, he would rather fight the case himself than have two lawyers forced upon him at the last minute by the Trial Judge when the said two lawyers were not familiar with the case and its details, and when he could not reach and subpoena witnesses and evidence needed by him to rebut the charges that he practiced medicine and operated a hospital and a private nursing home without license.

10. In addition to being forced to trial on short notice and with neither time nor opportunity to properly defend him-

self and without opportunity to secure his counsel, witnesses, and evidence contrary to the Constitution of the United States of America and of the Commonwealth of Pennsylvania, your petitioner was also denied due process in that he was not furnished with a subpoena with which even to attempt to secure his witnesses and evidence had he time to do so, and he was not properly arraigned in court, plead guilty or not guilty and was not properly informed of the nature and cause of crime with which he was charged, notwithstanding entries in the court docket to the contrary and which on petition he was denied an opportunity to show were false, and despite all the foregoing irregularity, absence of counsel and witnesses and evidence, lack of subpoena and notice and opportunity, the Trial Judge refused a sufficient continuance and as a result, your petitioner did not have a fair trial and as a result, he was denied equal protection of the law such as has been accorded to others in similar cases and was convicted without due process of law (R. 170a to 176a inclu.).

11. Your petitioner, convicted as aforesaid, was sentenced on Jan. 18, 1941 to prison for a period of 60 days and to pay a fine of $1,000.00 and pay the costs of prosecution in both cases, amounting to possibly $500.00, (R. 176a and 177a). Although able to pay said fine and costs and to suffer said imprisonment, your petitioner, feeling that a grave injustice had been done him and that he had been made to suffer a deprivation and denial of his rights as a citizen of the United States, and of the Commonwealth of Pennsylvania, as aforesaid, took an appeal to the Superior Court of the Commonwealth of Pennsylvania and the Superior Court of Pennsylvania, in an opinion by Judge Rhodes, filed June 30, 1941, a copy of which is submitted herewith, affirmed the judgments and sentences of the Quarter Sessions Court of York County, Pennsylvania, in the above cases and ordered that your petitioner appear in the court

below at such time as that court may direct for commitment until such time as the sentences of said court have been complied with. A copy of the record and of appellant's briefs in the above cases are also submitted herewith.

12. Subsequently your petitioner filed in the Superior Court, a Petition for reargument, which the Superior Court denied.

13. That the Quarter Sessions Court of York County, Pennsylvania, ordered your petitioner to appear before it on Monday, July 28, 1941, at 10 A. M. for commitment, but sentence was not imposed on your petitioner at that time or at any time down to the present time because of orders signed by the Trial Judge that appeals to the Superior and Supreme Courts of Pennsylvania and to the Supreme Court of the United States, should operate as a supersedeas (R. 3a and 12a).

14. That although the Superior Court of Pennsylvania says in its opinion that it has reviewed the entire record, it apparently has overlooked the fact that although your petitioner was convicted in the York County Quarter Sessions Court as of August Sessions, 1940, No. 42, of "Unlawfully operating a Private Nursing Home" and of "Unlawfully operating a Private Hospital", there is not one speck of evidence that he conducted a private nursing home, and therefore, he could not be properly convicted of doing so, and the allegations—conclusions of witnesses—that he conducted a private hospital, were made by persons, who, even if qualified to make such conclusions, gave no real facts on which to base such conclusions, and whose testimony with respect thereto was strongly rebutted by well-qualified persons, and whose testimony would have been still further rebutted had your petitioner been given the time, the opportunity and the process of the court to secure the attendance of additional witnesses.

15. That although the Superior Court of Pennsylvania says in its opinion that it has reviewed the entire record and has carefully examined appellant's briefs it apparently has overlooked the fact that the medical practice act exempts osteopaths or those practicing under the osteopathic practice act and does not interfere in any way with practice under an osteopathic license which specifically permits an osteopath to practice surgery. In spite of the fact that your petitioner showed beyond the shadow of a doubt, and it was admitted, that he is a licensed osteopathic physician in the Commonwealth of Pennsylvania, with the right to diagnose and treat disease and to have the assistance of nurses and to have patients and to practice surgery, and in spite of the fact that a medical doctor called as a witness by the Commonwealth testified that what your petitioner practiced could not properly be called the practice of medicine, your petitioner was convicted of "Unlawful Practice of Medicine and Surgery". Furthermore on this charge also your petitioner was denied the time, the opportunity and the process of the law necessary to secure the presence of medical doctors and other witnesses and evidence to show beyond the shadow of a doubt, that what he professed he practiced was not *materia medica.*

16. The Superior Court disregarded completely the fact that while the degree M.D. appeared on letters following your petitioner's signature and while such letters and other evidence was used to show that he held himself out as licensed to practice *materia medica* in the State of Pennsylvania, he was denied the right by evidence and testimony, to show that he had studied *materia medica* in another State and that he had the degree M.D. from a duly incorporated and authorized school of *materia medica* in another State with as much right to use the degree M.D. following his name in this State as a lawyer educated at Harvard or elsewhere outside of Pennsylvania would have the right to use

the degree L.L.B. following his name in Pennsylvania, even though not admitted to practice law there. And furthermore, he was denied the right to put in evidence for the jury's consideration, certificates showing that prior to the medical practice act he was licensed in Pennsylvania as a medical practitioner.

17. The Superior Court erred in its decision that the record was sufficient to sustain the decisions that your petitioner was guilty of "Unlawful Practice of Medicine and Surgery", of "Unlawfully operating a Private Nursing Home", and of "Unlawfully operating a Private Hospital".

18. That even if your petitioner's evidence was not deemed sufficient to rebut the charges referred to in paragraph 17 hereof, and even if the evidence was sufficient to sustain said charges, and this is not admitted, then, regardless of the number of months which your petitioner may have had to prepare his defense, he had neither time nor opportunity nor process with which to bring to the trial all his witnesses and evidence between the time of his indictment and the date of his trial two days later.

19. That the Superior Court appears to have misunderstood your petitioner's point that he refused to be represented by other than his own counsel, John P. Connelly, Esq., and that he was forced to try the case himself and flounder through it rather than have other than his own counsel, which he understands is not a refusal to have counsel as stated in the opinion of the Superior Court so much as a refusal to have other than his own.

20. That your petitioner on petition to the Trial Court and on petition to the Superior Court was denied an opportunity to take depositions and to show and to prove that the record was incorrect, deficient and incompiete and that

if it was corrected and completed, it would show that he was tried and convicted without due process.

21. Your petitioner avers that by reason of the foregoing, he has been denied his rights as a citizen and resident of the Commonwealth of Pennsylvania, and as a citizen of the United States of America—his right to be heard "by himself *and his counsel*", his right "to demand the nature and cause of the accusation against him", his right "to have compulsory process for obtaining witnesses in his favor", his right to reasonable notice and opportunity to marshall his witnesses and evidence, his right not to be prejudiced by one-sided pretrial of his case in the local newspapers—not knowing enough in the absence of counsel to ask for a change of venue—his right not to be deprived of liberty and property without due process of law, and his right not to be denied the equal protection of the law. (See reference to Federal and Pennsylvania Constitutions, Statutes and Appellate Court decisions on pages 9 to 12 inclu. of appellant's briefs filed herewith.)

22. That when the Superior Court of Pennsylvania denied your petitioner's petition for reargument, your petitioner filed a petition with the Supreme Court of Pennsylvania for the allowance of appeals thereto, but the Supreme Court of Pennsylvania, September 24, 1941, refused said petition.

23. That by such refusal the Supreme Court of Pennsylvania never took said case, and never entered it as a proceeding before that court on said court's records, thus making the Superior Court the highest court in the State of Pennsylvania to hand down a final decision in the case as of June 30, 1941.

Statement as to Jurisdiction.

It is contended that the Supreme Court of the United States of America has jurisdiction to review the sentences

of the Quarter Sessions Court of York County, Pennsylvania, in question because it is contended that the defendant is a citizen of the United States of America and that the convictions on which he has been sentenced in the above cases were obtained by denying the defendant a fair trial and by denying him due process and the equal protection of the law and counsel and witnesses and evidence and arraignment as set forth in the Petition for Allowance of Appeal which this statement as to jurisdiction accompanies, contrary to the provisions of Amendment XIV, Sec. 1, which provided *inter alia*: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

(a) The Statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States is found in U. S. C. A. Title 28, Sec. 344.

(b) The date of sentences sought to be reviewed is January 18, 1941, affirmed by Superior Court of Pennsylvania, June 30, 1941. An appeal to the Supreme Court of Pennsylvania has been refused, making the decision of the Superior Court of Pennsylvania on June 30, 1941, the final decision by an appellant court of the State. The date upon which this application for appeal is presented to the Justices of the Supreme Court of the United States of America, is September 29, 1941, within 3 calendar months from the aforesaid decision of the Superior Court of Pennsylvania.

An examination of the assignments of error (see briefs for appellant pages 4 to 8 inclu. submitted herewith, the record in the case and the rulings therein as disclosed by said record show the nature of the cases and the rulings of the court such as to bring the cases within the jurisdictional provisions referred to above and relied upon.

The questions involved are substantial—namely whether or not a citizen of the United States of America may be deprived of his liberty and property without due process of law, and whether a citizen of the United States within the jurisdiction of the Commonwealth of Pennsylvania shall be denied the equal protection of its laws.

The Federal questions sought to be reviewed were raised in the Quarter Sessions Court of York County, Pennsylvania, upon the trial of the case at York, Pa., on Friday, August 30, 1940, as follows: "The Defendant: If the court please, I would like to ask for a continuance, your Honor, on the ground that I have not had sufficient time to prepare my case for trial and the case being called the second day after a bill was found, I have not had time to prepare, and I stand on my constitutional rights and ask for a continuance of the case."

"The Court: Your request may be noted by the stenographer, and, under the circumstances, the Court is compelled to refuse it."

"The Court (to the District Attorney): You may see whether you can find counsel for the Defendant."

"Mr. Rudisill (Assistant District Attorney): If the Court please, Mr. Stein (Paul Stein, Esq.) is here and will assist the court."

"Mr. Paul Stein: I have already said, your Honor, that I did not care to represent the Defendant, but Mr. John T. Logan is here and he has said that he will assist me."

"The Court: Very well, we will appoint both of you."

"The Defendant: Your Honor, I have to beg to refuse counsel and cancel my prerogative of acting as my own attorney. I cannot accept counsel."

"The Court: Very well, you are privileged to do that. I did not know that was your desire."

(The foregoing appears in the record (Pages 18a and 19a) but does not disclose the fact that on the day preceding, August 29, 1940, the defendant, notified that he had been indicted on August 28, 1940, appeared in Chambers of Honorable Walter I. Anderson, his Trial Judge, informed him that counsel for defendant, John P. Connelly, Esq., of the Philadelphia Bar, was away on vacation and that he could secure neither his counsel, nor his witnesses, nor his evidence and requested for the first time, a postponement or continuance, which was refused.)

Referring to his attorney, John P. Connelly, Esq., of the Philadelphia Bar, page 47a of the record, the defendant said "Dr. Crandall: That is what I asked you for, your Honor, an attorney, and you would not allow me to have one."

"Mr. Rudisill (Assistant District Attorney): That is not true."

"The Court: Dr. Crandall, that is very objectionable and I want this Jury to understand that I agreed to appoint two attorneys for you just before you went to trial and you refused to have either of them. Now don't make any such accusation as that. Have you any further questions?"

"Dr. Crandall: Well, your Honor, my case is so highly technical, would you accept any two attorneys—"

"The Court: We are through with that."

"Dr. Crandall: Alright then, we are through with that. That is all."

And on page 139a of the record we find: "Witness (defendant): Your Honor, I called counsel in Philadelphia"—here the witness was stopped by the District Attorney and the court would not permit him to say that he had been unable to reach his counsel in Philadelphia, away on an August vacation. Then the witness proceeded: "The Witness: If I don't have a right to defend myself what do I have? All I ask is to defend myself. I ought to be accorded that without interrupting me to permit me to tell my story."

And on page 142a of the record "Dr. Crandall: In lieu of my inability to have any defense here, I am calling these people who just happened to accompany me in as employees of mine, to state what they know about the operation of the institution."

And on page 145a of the record: "Dr. Crandall: In view of the fact that I was not able to get any witnesses here, who were acquainted with me previously, that is all that I can produce for the moment, and therefore the defense rests."

And on page 146a of the record we find "Dr. Crandall: Inasmuch as the burden of proof is with the Commonwealth to make out its case, and there was not sufficient evidence produced, I move that the case be dismissed and the charges placed on the Commonwealth."

> "The Court: Your motion is refused. Exception to the defendant."

The Federal questions sought to be reviewed by the Supreme Court of the United States were also raised in the Quarter Sessions Court of York County, Pa., by the filing of motion and reasons for new trial (R. 159a to 161a inclu.).

The Federal questions sought to be reviewed were also raised in the Quarter Sessions Court of York County, Pa., by the filing of additional reasons in support of motion for new trial (R. 162a to 165a inclu.) and by the filing in said court of a petition for rule to show cause why the record in the above cases should not be enlarged and corrected (R. 170a to 175a inclu.).

The Federal questions sought to be reviewed by the Supreme Court of the United States were also raised in the Superior Court of the Commonwealth of Pennsylvania by statement of questions involved (appellant's briefs, p. 1) and by assignments of error (appellant's brief pages 2 to 8 incl.).

The opinion of the Quarter Sessions Court of York County, Pa., overruling defendant's motion for new trial

will be found on pages 165a to 169a incl. of the record submitted herewith.

The opinion of the Superior Court of the Commonwealth of Pennsylvania, affirming the decision of the Quarter Sessions Court of York County, Pa., as of June 30, 1941, is also submitted herewith.

H. EUGENE GARDNER,
Attorney for Petitioner and Appellant.

September 29, 1941.

Addenda.

The statutes of the Commonwealth of Pennsylvania referred to and quoted on the second page of the petition attempt to do indirectly that which they do not do directly and specifically—namely make the operation of a health school the operation of a hospital or nursing home and have a license therefor and make the use of M.D. the practice of medicine.

Prayer.

Wherefore, your petitioner, believing that an injustice has been done, that he was not given a fair trial, that he was denied due process of law, that he has been denied the equal protection of the law, that his rights were not adequately protected by the Trial Judge, that the errors referred to above affect his constitutional and substantive rights and that the evidence does not support and justify the verdicts and judgments, and that even if such evidence were deemed sufficient, and this is not admitted, he should at least be given a new trial with sufficient notice and opportunity and process to secure and have present and have the benefit of all his witnesses and evidence, prays your Honorable Court that writs of certiorari issue under the seal of Your Honorable Court, directed to the Superior Court of Pennsylvania commanding said court to certify and send to your

Honorable Court a full and complete transcript of the record and of the proceedings of the said Quarter Sessions Court of York County, Pennsylvania, had in the cases numbered and entitled Commonwealth of Pennsylvania, Appellee, *vs.* George E. Crandall, Appellant, August Sessions, 1940, Nos. 42 and 43 and Nos. 37 and 38 Superior Court March term 1941, to the end that these cases may be reviewed and determined by your Honorable Court as provided for by the Constitution and Statutes of the United States, and that the sentences of said Quarter Sessions Court of York County, Pennsylvania, and the Superior Court of Pennsylvania may be reversed by Your Honorable Court and/or said cases returned for new trials, and for such further relief as to Your Honorable Court may seem proper.

GEORGE E. CRANDALL.

Dated October 2nd, 1941.

STATE OF PENNSYLVANIA,
County of York, ss:

George E. Crandall, being duly sworn according to law, deposes and says that he is the above-named petitioner and appellant, and that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.

GEORGE E. CRANDALL.

Sworn to and subscribed before me this 2nd day of October, A. D. 1941.

B. W. BAKER,
Justice of the Peace.

My commission expires Jan. 3, 1944.

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